REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LOYOLA PLANS CONSOLIDATED, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9216

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *J.*

Promulgated:
JUN 29 2020 8:45 Am

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RESOLUTION

BACORRO-VILLENA, J.:

For resolution of this Court is respondent's **Motion for Reconsideration (MR)**, filed on 19 December 2019, with petitioner's **Comment (Re: Motion for Reconsideration dated December 16, 2019)**, filed on 16 January 2020. Respondent seeks for the Court to reconsider its 03 December 2019 Decision of the Court, which dispositive portion reads:

> ...
>
> **WHEREFORE**, the instant Amended Petition for Review is **GRANTED**. Accordingly, the assessment against petitioner Loyola Plans Consolidated, Inc. for deficiency income tax, value-added tax, expanded withholding tax, documentary stamp tax, and improperly accumulated earnings tax for the calendar year 2010, in the aggregate amount of ₱292,114,856.15, are **CANCELLED** and **SET ASIDE**.
>
> ...

In the said MR, respondent stated that the Court erred in holding that: (1) the assessment for CY 2010 against petitioner is void for want of authority on the part of the revenue officers who conducted and completed the audit; (2) its right to assess petitioner was already barred by prescription; and, (3) the three (3) waivers executed by petitioner's authorized representatives extended the regular three-year period to assess petitioner.

In support of the first assigned error, respondent argued that the Commissioner of Internal Revenue (**CIR**) can delegate the power to issue a notice of audit and such is, in essence, a contract of agency (with the CIR as the principal and the Regional Director [**RD**] as the agent).

In this case, the re-assignment to Revenue Officer (**RO**) Sarah A. Urbano for the continuance of the audit was through a Memorandum of Assignment (**MOA**), an equivalent document of a Letter of Authority (**LOA**). According to respondent, the National Internal Revenue Code (**NIRC**) only requires that the grant of authority be done in writing. A MOA is computer-generated with its own number identifier where progress of the audit can be tracked through the said unique number or through the LOA from which it originates. As provided in Revenue Memorandum Order (**RMO**) 62-2010, a MOA with a system generated number shall be issued through the Letter of Authority Monitoring System (**LAMS**) when the RO is reassigned, transferred or has retired.

Moreover, the law only requires that the examination by an RO is "pursuant to a LOA" and does not indicate that the RO must be identified in the LOA itself.

As regards the invalidity of the three (3) waivers executed, respondent contended that petitioner is equally guilty of the lapses in the execution of the waivers and it should not be allowed to benefit therefrom. The government's right to assess and collect taxes should not be jeopardized merely because of its officers' mistakes and lapses, especially in cases of non-compliance with existing rules, regulations, and laws, where the taxpayer is obviously in bad faith.

Petitioner, for its part, countered that a valid assessment must be supported by a valid LOA. When a LOA is invalidated, the same cannot give rise to a valid assessment. It pointed out Revenue Audit Memorandum Order (**RAMO**) 43-90, where it is provided that the issuance of a new LOA is required for the continuance of the audit upon the change of the RO initially assigned.

As regards the waivers executed, petitioner contended further that the application of the exception laid down in the *CIR v. Next Mobile Inc. (formerly Nextel Communications Phils., Inc.*[1] (**Next Mobile**) case is appropriate only if the waivers' invalidity or infirmity is caused by, or attributable to, the taxpayer. It insisted that the fault in the preparation of the waivers cannot be attributed to it.

The Court resolves below.

After a careful study of the parties' contrasting arguments, the Court is constrained to deny respondent's MR.

A LOA, although system-generated, should nevertheless contain the name/s of the ROs or audit team who would conduct the audit, the type(s) of taxes to be investigated and the taxable year involved. Section 13 of the NIRC is clear:

> ...
> **SEC. 13.** ***Authority of a Revenue Office[r].*** - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority** issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[2]
> ...

Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue

[1] G.R. No. 212825, 07 December 2015.
[2] Emphasis and underscoring supplied.

officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[3]

Moreover, we do not doubt the authority of the RD to issue the LOA and to subsequently amend, revalidate or cancel the same. Where we find infirmity on is in the issuance of a MOA by the Chief of Office, who was not authorized to issue the LOA. In effect, he had overridden the power of the RD by amending the LOA which he/she was not authorized to do. Certainly, the power to amend the details contained in the LOA lies with the RD and other authorized persons, or respondent CIR himself.

To be clear, the mere issuance of a MOA to assign new ROs who would be replacing those named initially in the original LOA will not, by itself, invalidate the assessment. However, in this case, where the MOA essentially amended the mandate of the original LOA, it should have been issued by the proper authorized officer.

As regards the invalidity of the waivers, We are unconvinced that petitioner was equally guilty of the lapses to warrant the application of the ruling in *Next Mobile*. The case at bar is not in all fours with the factual milieu in *Next Mobile*. With this said, We are constrained to affirm our position that the waivers executed were fatally defective and did not extend the prescriptive period for the assessment.

WHEREFORE, the foregoing premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit. Accordingly, the Court's Decision dated 03 December 2019 is hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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3 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

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I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice